



Chapter 8: Revolving Funds



CHAPTER 8

REVOLVING FUNDS

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CHAPTER 8

REVOLVING FUNDS

I. INTRODUCTION.

A. Objectives. Following this block of instruction, students will:

1. Understand the statutes and regulations governing revolving funds.
2. Understand how cash flows into and out of revolving funds.

B. Background. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090102; OGC Fiscal Law Outline, Section Q, <http://www.hqda.army.mil/ogc>.

1. Revolving funds satisfy the DOD's recurring requirements using a business-like buyer-and-seller approach.
 - a. The revolving fund structure creates a customer-provider relationship between military operating units and their support organizations.
 - b. The intent of this structure is to make decision-makers at all levels more aware of the costs of goods and services by making military operating units pay for the support they receive.
2. Revolving funds are not profit-oriented entities.
 - a. The goal of a revolving fund is to break even over the long term.
 - b. Revolving funds stabilize or fix their selling prices to protect customers from unforeseen fluctuations.

3. In the past, there were two distinct types of revolving funds.
 - a. The DOD used stock funds to procure material in bulk from commercial sources, hold it in inventory, and sell it to authorized customers.
 - b. The DOD used industrial funds to provide industrial and commercial goods and services (e.g., depot maintenance, transportation, and research and development) to authorized customers.
4. In 1991, Congress established the Defense Business Operations Fund (DBOF) and authorized its indefinite continuation in 1994. National Defense Authorization Act, 1995, Pub. L. No. 103-337, § 311, 108 Stat. 2662, 2708-09 (1994). The DBOF combined the DOD's existing nine stock and industrial funds and five defense business functions into a single revolving fund.
5. In 1996, the DOD Comptroller reorganized the DBOF and created several working capital funds including an Army Working Capital Fund, a Navy Working Capital Fund, an Air Force Working Capital Fund, and a Defense-Wide Working Capital Fund.¹
6. In 1998, Congress repealed the statutory authority (10 U.S.C. § 2216a) for the DBOF. See Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub.L. No. 105-261, § 1008(b), 112 Stat. 1921, 2114 (1998).

C. General Concepts.

1. Definition. "Accounts authorized by specific provisions of law to finance a continuing cycle of business-type operations, and which are authorized to incur obligations and expenditures that generate receipts." DoD Financial Management Reg., DoD Reg. 7000.14-R, Definitions. Go to <http://www.dtic.mil/comptroller/fmr>

¹ In 1997, the DOD Comptroller established a separate working-capital fund for the Defense Commissary Agency. This working-capital fund took effect in FY 1999.

2. Revolving funds are designed to give management personnel the financial authority and flexibility necessary to adjust their operations.
 - a. Funding is not tied to a particular fiscal year.
 - b. Revolving funds operate under a buyer/seller or provider/customer relationship concept.
 - c. Revolving funds derive their name from the cyclic nature of their cash flow. See DOD Reg. 7000.14-R, vol3, ch 19, para. 1902; see also DOD Reg. 7000.14-R, vol. 2B, ch. 0, para.090102.
3. Congress normally provides appropriations to start, increase, or restore a revolving fund.
 - a. The working capital resources are referred to as “the corpus” of the fund.
 - b. Working capital and assets may also be transferred from existing appropriations and fund accounts.
4. Customer orders provide the budgetary resources necessary to finance the revolving fund’s continued operations.
 - a. The fund sells inventory and/or services to authorized customer.
 - b. The fund then deposits the proceeds of the sales back into the fund to pay for the resources required to operate the fund.

- D. Other Federal Agency Revolving Funds. Most agencies have at least one working capital fund covering common agency services and/or supplies. The following is a partial listing of the various authorities applicable to civilian agencies: 33 U.S.C. § 576 (Corps of Engineers); 15 U.S.C. § 1521 (Commerce); 7 U.S.C. § 2235 (Agriculture); 15 U.S.C. §278b (National Institute of Standards and Technology); 20 U.S.C. § 3483 (Education); 22 U.S.C. § 2684 (State); 28 U.S.C. § 527 (Justice); 29 U.S.C. §§ 563, 563a (Labor); 31 U.S.C. § 322 (Treasury); 40 U.S.C. §293 General Services Administration; 42 U.S.C. §3513 (Health and Human Services); 42 U.S.C. §3535(f) (Housing and Urban Development); 43 U.S.C. 1467 (Interior); 43 U.S.C. § 1472 (Bureau of Reclamation); and 49 U.S.C. § 327 (Transportation).

II. STATUTORY BASIS AND REQUIREMENTS.

- A. Working-Capital Funds. 10 U.S.C. §§ 2208(a)-(b). The Secretary of Defense may request the Secretary of the Treasury to establish working-capital funds.
1. Purpose. 10 U.S.C. § 2208(a). The DOD uses working-capital funds to:
 - a. Finance inventories of supplies;
 - b. Provide working capital for industrial-type activities; and
 - c. Provide working capital for commercial-type activities that provide common services within or among the DOD's various departments and agencies.
 2. Goal. 10 U.S.C. §§ 2208(a), (e). The DOD's goal is to account for and control program costs and work as economically and efficiently as possible.
 3. The Charter. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090102.B.
 - a. The Secretary or Assistant Secretary of the Military Department (or the Director of the Defense Agency) must prepare and sign charter that details the scope of the potential activity group.

- b. The Military Department (or Defense Agency) must submit the charter to the DOD Comptroller for approval.
- c. The DOD Comptroller will evaluate the potential activity group based on the following criteria:
 - (1) The products or services the potential activity group will provide to its customers;
 - (2) The potential activity group's ability to establish a cost accounting system to collect its costs;
 - (3) The potential customer base:² and
 - (4) Any buyer-seller advantages and disadvantages (e.g., the customers' ability to influence cost by changing demand).

4. Policy. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para 090103.

- a. Operating Expenses. 10 U.S.C. §§ 2208(c)-(d), (g)-(h). Working-capital funds pay for their own operations.
 - 1. Congress normally appropriates funds to capitalize working-capital funds initially; however, the Secretary of Defense may also provide capitalizing inventories.
 - 2. Working-capital funds pay the cost of:
 - a. Supplies acquired, manufactured, repaired, issued, or used;
 - b. Services or work performed; and
 - c. Applicable administrative expenses.

² The DOD Comptroller's goal is to align resources with requirements.

3. Customers then reimburse working-capital funds from:
 - a. Available appropriations; or
 - b. Funds otherwise credited for those costs.³
- b. Cash Management. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103A. See Memorandum, DOD Comptroller, subject: Working Capital Funds Cash Management Responsibility (5 Jan. 95).
 - (1) Military Departments (and Defense Agencies) are responsible for the cash management of their working capital funds.
 - (2) Working capital funds should maintain the minimum cash balance necessary to meet their operational (7-10 days) and disbursement (6 months) requirements.
 - (3) Working capital funds should strive to eliminate the need to use advance billings to maintain their cash solvency.
- c. Contracting in Advance of the Availability of Funds. 10 U.S.C. § 2208(k). Working-capital funds may contract in advance of the availability of funds for:
 - (1) Unspecified minor military construction projects costing more than \$100,000;
 - (2) Automatic data processing equipment or software costing more than \$100,000;
 - (3) Other equipment costing more than \$100,000; and
 - (4) Other capital improvements costing more than \$100,000.

³ Requisitioning agencies may not incur costs for goods or services that exceed the amount of their appropriations or other available funds. 10 U.S.C. § 2208(f).

- d. Advance Billing. 10 U.S.C. § 2208(l). The Secretary of a military department may bill a customer before it delivers the goods or services.⁴
 - (1) The Secretary concerned must notify Congress of the advanced billing within 30 days of the end of the month in which it made the advanced billing.⁵
 - (2) The notification must include:
 - (a) The reason(s) for the advance billing;
 - (b) An analysis of the effects of the advance billing on military readiness; and
 - (c) An analysis of the effects of the advance billing on the customer.
- e. Limits on Advance Billings. 10 U.S.C. § 2208(l). Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. No. 105-261, §§ 1007-1008, 112 Stat. 1921, 2114 (1998).
 - (1) The DOD may not impose advance billings totaling more than \$1 billion per year.
 - (2) The Secretary of Defense must account for, report, and audit the funds and activities managed through working-capital funds separately.
 - (3) Charges for the goods and services provided through a working-capital fund must include amounts necessary to recover:

⁴ But see National Technical Information Service – Use of Customer Advance Deposits for Operating Expenses, B-243710, 71 Comp. Gen. 224, 226 (1992) (concluding that NTIS had no authority to use customer advances that were not directly related to a firm order to pay its operating expenses).

⁵ The Secretary of Defense may waive the notification requirement during a war, national emergency, or contingency operation. 10 U.S.C. 2208(l)(2).

- (a) The full costs of the goods and services provided; and
 - (b) The depreciation of the fund's capital assets.
- (4) Charges for the goods and services provided through a working-capital fund may not include amounts necessary to recover:
 - (a) The costs of military construction projects other than minor military construction projects financed under 10 U.S.C. § 2805(c)(1);
 - (b) The costs incurred to close or realign military installations; or
 - (c) The costs associated with mission critical functions.
- (5) The Secretary of Defense and the Secretaries of the military departments must establish billing procedures to ensure that the balance in their working-capital fund does not exceed the amount necessary to operate the fund.
- f. Capital Investments. DOD Reg. 7000.14-R, vol. 2B, Ch9, para.090103C.
 - (1) Working capital funds must finance the acquisition of most of their capital assets through the fund.⁶
 - (2) Capital assets include depreciable property, plant, equipment, and software that:
 - (a) Costs \$100,000 or more; and
 - (b) Has a useful life of 2 years or more.

⁶ This requirement does not apply to construction or the capital assets listed in DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103D (e.g., major Range and Test Facility Activities items). DOD Reg. 7000.14-R, vol. 2B, ch9, para 090103C.

- g. Construction. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103E.
 - (1) Working-capital funds must finance minor construction projects costing more than \$500,000 through the annual Military Construction Appropriations Act.⁷
 - (2) Working-capital funds may finance project planning and design costs through the fund.
- h. The Full Recovery of Costs and Setting of Prices. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103. See DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090104A.
 - (1) Managers of activity groups must set their prices to recover their full costs over the long run (i.e., they must set their prices to recoup actual/projected losses or return actual/projected gains in the budget year).
 - (a) Supply management activity groups establish customer rates by applying a surcharge to the commodity costs.
 - (b) Non-supply management activity groups establish unit cost rates based on identified output measures or representative outputs (e.g., cost per direct labor hour, cost per product, cost per item received, cost per item shipped, etc.).
 - (2) Prices normally remain fixed during the budget year.⁸
 - (a) This is known as the stabilized rate policy.⁹

⁷ Projects costing more than \$500,000 must be approved by the DOD Comptroller and identified on the annual operating budget (AOB) prior to execution to avoid an Antideficiency Act violation. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103E.

⁸ This provision does not apply to depot maintenance activity groups. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103H.2. A depot maintenance activity group must recoup operating losses or return operating gains of \$10 million or more in the current fiscal year (or the 1st quarter of the next fiscal year in the case of 4th quarter gains or losses). DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103H.4.

- (b) This policy protects customers from unforeseen inflationary increases and other cost uncertainties.
- i. Revenue Recognition. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103O.
 - (1) Working-capital funds must recognize revenue and associated costs in the same accounting period.
 - (2) Beginning in FY 2000, non-supply management activity groups must use the “Percentage of Completion Method” of recognizing revenue.
 - (3) Working-capital funds may not recognize an amount of revenue that exceeds the amount specified in the order.
- j. Apportionments and Budgetary Resources.¹⁰ DOD Reg. 7000.14-R, vol. 3, ch. 19, paras. 1902 and 1903.
 - (1) The Office of Management and Budget (OMB) apportions appropriations and contract authority to working-capital funds by means of a DD Form 1105.
 - (2) Working-capital funds may not incur obligations in excess of its apportioned budgetary resources or total approved operating costs.

⁹ The “stabilized rate” is defined as “the cost per direct labor hour (or other output measure) customers are charged for the products and services provided by the depot or activity group . . . [It] is determined by taking the approved Direct Labor Hour rate (or other cost per output measure) for the budget year and adjusting it for both inter-Fund transactions (adjustments to reflect changes in the costs of purchases between activity groups within the Fund), and for the impact of prior year gains or losses as reflected by the [Accumulating Operating Result].” DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090104B.

¹⁰ The following budgetary resources are available for apportionment: (1) appropriations; (2) unobligated balances available at the beginning of the FY; (3) reimbursements and other income; (4) recoveries of prior year obligations; (5) restorations; and (6) anticipated contract authority. Other assets (e.g., inventories and capital assets) are not budgetary resources. DOD Reg. 7000.14-R, vol. 3, ch. 19, paras. 190203 and 190205.

- (3) Working-capital funds may not obligate the difference between the fund's total budgetary resources and the amount of contract authority the OMB has apportioned to it.
- (4) Working-capital funds must maintain a positive budgetary balance.

III. DEFENSE WORKING CAPITAL FUNDS.

A. Types of Funds. DOD Reg. 7000.14-R, vol. 2B, ch. 9.

- 1. Supply Management Activity Groups.¹¹
 - a. Supply management activity groups provide a means of accounting for and financing the purchase, storage, and sale of common use items and depot level repair assemblies.
 - b. Each supply management activity group acquires materials and supplies with its appropriations and other cash accounts. These transactions increase the activity group's inventory and decrease its cash.
 - (1) The materials and supplies are held in inventory until the activity group issues (sells) them to authorized customers.
 - (2) Examples of the types of materials and supplies that supply management activity groups typically acquire include:
 - (a) Nonstandard end items of equipment that are not centrally managed and have a standard unit price of less than \$25,000;

¹¹ These types of funds were previously known as Supply Management Business Areas or Stock Funds.

- (b) Assemblies, spares, and repair parts that are reparable at the depot level or below;
 - (c) Spares and repair parts which are not reparable; and
 - (d) Food, clothing, and petroleum products.
 - c. When the supply management activity group issues (sells) supplies to authorized customers, the activity group charges the supplies to the customers' account. These transactions increase the activity group's cash and decrease its inventory.
- 2. Non-Supply Management Activity Groups.¹²
 - a. Non-supply management activity groups finance the operating costs of major service units, such as arsenals, depots, and shipyards.
 - b. Non-supply management activity groups provide services on a reimbursable basis to authorized customers.
 - (1) Non-supply management activity groups do not maintain inventories of finished products.
 - (2) Non-supply management activity groups generate work by accepting customer orders.
- 3. Management Funds. 10 U.S.C. § 2209.
 - a. The DOD uses management funds to conduct operations:
 - (1) Financed by at least two appropriations;
 - (2) Whose costs may not be distributed and charged to those appropriations immediately.

¹² These types of funds were previously known as Depot Maintenance Business Areas or Industrial Funds.

- (a) There is an Army Management Fund, a Navy Management Fund, and an Air Force Management Fund.
 - (b) Each fund consists of:
 - (1) A corpus of \$1 million; and
 - (2) Any additional funds appropriated to the fund.
- b. A military department may use a management fund to procure goods and services; however, the military department responsible for the procurement must have appropriations available to reimburse the fund immediately.

IV. OTHER REVOLVING FUND AUTHORITIES

A. The Clinger-Cohen Act of 1996.

- 1. General. Section 5112(e) of the FY 1996 National Defense authorization Act (Pub. L. No. 104-106)(permanently codified at 40 U.S.C. § 14129e)) instructed the Director, Office of Management and Budget (OMB), to designate as considered appropriate, one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.
- 2. Implementation.
 - a. OMB has designated the General Services Administration (GSA) as the executive agent for certain government-wide acquisitions of information technology (IT).

- b. The scope of the designation is limited to programs that are funded on a reimbursable basis through the Information Technology Fund established by 40 U.S.C. § 757. These programs include the Federal systems Integration and Management Center (FEDSIM) and Federal Computer Acquisition Center (FEDCAC), as well as other existing government-wide IT acquisition programs.
- c. The OMB designation, in combination with 40 U.S.C. § 757 provides separate authority for acquisition from these GSA programs.
- d. If the Clinger-Cohen Act applies, the Economy Act is inapplicable.
- e. Obligation. Orders placed pursuant to the Clinger-Cohen Act shall be treated for obligational purposes as if they were placed with commercial activities. In other words, obligation occurs upon the formation of a binding agreement between the ordering agency and the GSA and deobligation is required to take place merely because the ordering agency's appropriation has expired. See DFAS-IN Reg. 37-1, para. 080609. that does not imply, however, that those funds may be used for other purposes in addition to or in lieu of what was included in the interagency agreement. See Continued Availability of Expired Appropriation for Additional Project Phases, B-286929m April 25, 2001 *available at*: http://www.access.gpo.gov/su_docs/aces/aces170.shtml.
- f. As with Economy Act orders, agencies may not circumvent the competition requirements by placing an order against a contract under one of these programs which falls outside the scope of that contract. See e.g., Floro & Associates, B-285451.3; B-285451.4, 2000 CPD ¶172 (GAO concluded GSA's task order for "management services" was materially different from that of the underlying contract, which required "commercially off-the shelf hardware and software resulting in turnkey systems for GSA's client agencies").
- g. Information on FEDSIM can be found at: http://www.gsa.gov/Portal/content/offerings_contentJsp?channelId=13985&programId=8061&contentOID=118132&contentType=1004&cid=2.

- h. Information on FEDCAC can be found at:
http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID+119556&contentType=1004.

B. Franchise Funds.

1. Background. Congress has decided that competition between agencies on services that were common between the various agencies would result in increased efficiency and lower cost. As a result, Section 403 of the Government Management Reform Act of 1994, Pub. L. no. 103-356, 108 Stat. 3410, 3413 (found at 31 U.S.C. § 501 note) established a pilot “franchise fund” program. These franchise funds are a special version of working capital funds which permit other agencies (not just the franchise fund’s sponsor) to place orders.
2. The Pilot Program. The Office of Management and Budget (OMB) selected six agencies to run pilot programs covering capital equipment, automated data processing systems, and financial management/management information systems. The following agencies have authority to establish franchise funds:
 - a. Department of Veterans Affairs. See Pub. L. No. 104-201, 110 Stat. 2874, 2880 (1996);
 - b. Environmental Protection Agency. See Pub. L. No. 104-204, 110 Stat. 2874, 2912-13 (1996);
 - c. Federal Aviation Administration. See Pub. L. No. 104-205, 110 Stat. 2951, 2957-58 (1996);
 - d. Department of Interior. See Pub. L. No. 104-208, §113, 110 Stat. 3009, 3009-200 (1996); and
 - e. Department of Treasury. See Pub. L. No. 104-208, 110 Stat. 3009, 3009-316, -317 (1996).

3. Obligation. The obligation rules of the franchise funds work similar to the other non-Economy Act authorities. Upon entering into a binding interagency agreement, the ordering agency obligates funds and need not deobligate upon expiration of the ordering agency's appropriation. The interagency agreement establishes the boundaries on the amount to be obligated, however. In addition, if the work is accomplished at a lower rate than initially anticipated, the remaining obligated fund may not be used to pay for other work not covered by the initial interagency agreement.

V. GENERAL FISCAL PRINCIPLES RELATED TO REVOLVING FUNDS.

- A. The Miscellaneous Receipts Statute. 31 U.S.C. § 3302(b). The statute requires an official or agent of the Government to deposit money received from any source in the Treasury without deduction for any charge or claim.

1. General Rule.

- a. Income generated by a revolving fund represents money collected for the use of the United States.
- b. A revolving fund may only withdraw or expend this income in consequence of an appropriation made by law.
- c. Retention of Customer funds by Working Capital Fund. See 10 U.S.C. §§ 2208, 2210; see also 31 U.S.C. § 322(d). Congress has expressly created an exception to the Miscellaneous Receipts Statute permitting working capital funds to retain customer funds ("The fund shall be reimbursed . . . from amounts available to the Department or from other sources, for supplies and services at rates that will equal [its] expenses of operation . . . Amounts the Secretary decides are in excess of the needs of the fund shall be deposited . . . in the Treasury as miscellaneous receipts."). Once the customer funds are transferred into the revolving fund, however, the ordering agency must comply with the normal fiscal rules concerning obligation and bona fide needs. Agencies, therefore, may not "bank" or "park" their money in a revolving fund to prolong its life. See Implementation of the Library of Congress FEDLINK Revolving Fund, B-288142, sep. 6, 2001; Matter of: Continued Availability of Expired Appropriation for Additional Project Phases, B-286929, apr. 25, 2001 *available at*: http://www.access.gpo.gov/su_docs/aces/aces170.shtml.

- B. The Purpose Statute. 31 U.S.C. § 1301. The statute requires federal agencies to apply appropriations only to the objects for which Congress made the appropriations.
1. Restrictions on the Use of Revolving Funds.
 - a. Federal agencies may only use revolving funds for expenditures that are reasonably connected to the authorized activities of the fund. See The Honorable Robert W. Kastenmeier, B-230304, 1988 WL 27283 (C.G. Mar. 18, 1988) (unpub.) (concluding that Federal Prison Industries, Inc., could use its revolving fund to construct industrial facilities and secure camps to house prisoners engaged in public works, but not general penal facilities or places of confinement); see also GSA – Working Capital Fund, B-208697, 1983 WL 27433 (C.G. Sep. 28, 1983) (unpub.) (concluding that GSA could not use its working-capital fund for its mail room, library, and travel services because these items were not specifically authorized); To the Administrator, Veterans Admin., B-116651, 40 Comp. Gen. 356, 358 (1960) (concluding that a proposal to finance and operate a centralized silver reclamation program was not the type of operation the VA’s supply fund authorized).
 - b. A revolving fund must deposit any money generated by using the fund for an unauthorized purpose in the Treasury as a miscellaneous receipt. See To the Administrator, Veterans Admin., B-116651, 40 Comp. Gen. 356, 358 (1960) (stating that the VA must deposit collections from the sale of reclaimed silver and scrap gold must be deposited in the Treasury).
 2. Restrictions on the Use of Customer Appropriations. DOD Reg. 7000.14-R, vol. 11B, ch. 50.
 - a. A revolving fund customer may not use its appropriated funds to do indirectly what it may not do directly.
 - b. Appropriated funds cited on reimbursable orders:
 - (1) Are only available for purposes permissible under the source appropriation; and

- (2) Remain subject to restrictions applicable to the source appropriation.

C. The Bona Fide Needs Rule. 31 U.S.C. § 1502(a). The statute states that an appropriation limited to a definite period is only available for the payment of expenses properly incurred during that period.

1. Restrictions on the Use of Revolving Funds.

- a. 10 U.S.C. § 2210 states that: “Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense . . . may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.”

- (1) Revolving funds are “no year” funds. See, e.g., Department of Defense Appropriations Act, 2000, Pub. L. No. 106-79, 113 Stat. 1212 (1999). However, the GAO believes that it is improper to “bank” an agency’s annual funds with a GSA account to cover future year needs. Matter of: Implementation of the Library of Congress FEDLINK Revolving Fund, B-288142, Sep. 6, 2001; Matter of: Continued Availability of Expired Appropriation for Additional Project Phases, B-286929, Apr. 25, 2001.

- (2) Revolving funds are not dependent upon annual appropriations.

- b. The Bona Fide Needs Rule does not normally apply to the use of revolving funds. But see 10 U.S.C. § 2213(a) (limiting the acquisition of any supply item to 2 years of operating stock); U.S. GEN. ACCOUNTING OFFICE, REPORT TO CONGRESS, DEFENSE WORKING CAPITAL FUND: IMPROVEMENTS NEEDED FOR MANAGING THE BACKLOG OF FUNDED WORK (2001).

2. Restrictions on the Use of Customer Appropriations. DOD Reg. 7000.14-R, vol. 11B, ch. 50.
 - a. A revolving fund customer may not use its appropriated funds to do indirectly what it may not do directly.
 - b. The Bona Fide Needs Rule does apply to the use of customer appropriations.

VI. REVOLVING FUNDS AND THE RULES OF OBLIGATION.

A. Customer Orders.

1. Supply Management Activity Groups. DOD Reg. 7000.14-R, vol. 3.
 - a. If the obligation is for a project order under 41 U.S.C. § 23, an Economy Act order under 31 U.S.C. § 1535, or a reimbursable procurement order to another military department, obligate the amount of the order using funds current when the revolving fund accepts the order.
 - b. If the obligation is for a direct citation procurement order to another military department, obligate the amount of the order using funds current when the parties sign the contract (or other obligating document).
 - c. If the obligation is for an order issued to another government agency as required or authorized by law, obligate the amount of the order using funds current when the customer places the order.
2. Non-Supply Management Activity Groups. DOD Reg. 7000.14-R, vol. 3.
 - a. If the obligation is for an order placed with an industrially funded activity, obligate the amount of the order using funds current when the revolving fund accepts the order.

- b. An order may not be accepted unless the revolving fund may:
 - (1) Begin work within 90 days; and
 - (2) Complete work within the projected period.
- c. Start of work is defined as:
 - (1) Cost incurred; or
 - (2) Other action that the revolving fund may not legally perform without an accepted order.
- d. These steps do not qualify as a valid start of work if the revolving fund takes them earlier than necessary to support the completion of the work.

B. Obligations of Revolving Funds.

- 1. The requirements of 31 U.S.C. § 1501 apply to revolving funds. U.S. Army, Corps of Engineers Civil Works Revolving Fund, B-242974.8, Dec. 11, 1992, 72 Comp. Gen. 59, 61 (concluding that the legislative mandate to operate a revolving fund “within its own resources” does not relieve the Corps of Engineers of requirement to recognize and record obligations IAW 31 U.S.C. § 1501).
- 2. Revolving funds should generally recognize and record obligations at the time the parties sign the contract (or other obligating document).

VII. VIOLATIONS OF THE ANTIDEFICIENCY ACT.

- A. Types of Violations. 10 U.S.C. §§ 1341-1342; DOD Reg. 7000.14-R, vol. 3B, ch. 19. An Antideficiency Act violation occurs when a revolving fund:

1. Obligates funds in excess of an appropriation or apportionment. 31 U.S.C. § 1341(a)(1)(A). See U.S. Army, Corps of Engineers Civil Works Revolving Fund, B-242974.8, Dec. 11, 1992, 72 Comp. Gen. 59, 61 (stating that the Antideficiency Act prohibits the Corps of Engineers from overobligating the available budget authority in its Civil Works Revolving Fund); National Technical Information Service – Use of Customer Advance Deposits for Operating Expenses, B-243710, 71 Comp. Gen. 224, 227 (1992) (concluding that NTIS violated the Antideficiency Act to the extent it used monies that were not available to it to pay its operating expenses and no other funds were available to cover the obligations).
2. Obligates funds in advance of an appropriation required to support that obligation, absent a specific exception. 31 U.S.C. § 1341(a)(1)(B).
3. Has an appropriation level deficit cash balance with the U.S. Treasury. 31 U.S.C. § 1341(a)(1)(A).
4. Accepts voluntary services. 31 U.S.C. § 1342.

B. Application of the Antideficiency Act to Reimbursable Orders.

1. A reimbursable order is an agreement to provide goods or services to certain activities, tenant activities, or individuals where the support is:
 - a. Initially provided using mission funds; and
 - b. Reimbursed through a billing procedure.
2. Reimbursable orders will not be administered or accounted for as separate subdivisions of funds like allotments.
 - a. The ordering activity will perform appropriation-type accounting for the order as if it were a contract.

- b. A revolving fund will not necessarily violate 31 U.S.C. § 1517 if it incurs obligations, costs, or expenditures that exceed the amount of a single reimbursable order.
 - c. However, the revolving fund may not exceed its own total obligation authority, or the total obligation authority of the ordering activity.
- 3. Reimbursable orders for work or services done on a cost-reimbursable basis will contain a cost ceiling for billing purposes. This limits an ordering activity's liability if a revolving fund incurs costs that exceed the ceiling.

C. Other Possible Antideficiency Act Violations.

- 1. Construction. DOD Reg. 7000.14-R, vol. 2B, ch. 9, para. 090103E. Activities financed by working capital funds may only use \$750,000 of these funds to finance construction projects.
- 2. Specific Statutory Limitations. See, e.g., National Defense Authorization Act, 1995, Pub. L. No. 103-337, § 314, 108 Stat. 2663 (1994) (imposing a limit of 65% of sales on the obligational authority of stock funds during FY 1995 to further the drawdown of defense stocks).¹³

VIII. CONCLUSION.

¹³ This is merely an illustrative example. This limitation no longer applies. See, e.g., Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub.L. No. 105-261, 112 Stat. 1920 (1998). Practitioners dealing with working capital funds should review the yearly DoD authorization and appropriation acts to determine whether Congress has imposed any such limitations.

APPENDIX A

REVOLVING FUND CYCLE



